

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED

U.S. DISTRICT COURT  
NEW MEXICO

03 APR 22 PM 4:27

JAMES SEABA and  
CORY PHILLIPS,

Plaintiffs,

v.

Civ. No. 02-103 LH/RHS

*G. Albrecht, Esq.* MLK

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

**AFFIDAVIT OF LISA ALBRECHT  
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

STATE OF NEW MEXICO )  
                          )  
                          ) ss.  
COUNTY OF BERNALILLO )

Lisa Albrecht, being first duly sworn upon oath, states as follows:

1. I am the Corporate Secretary for MesoSystems Technology, Inc. ("MesoSystems"), defendant in this action. I have been employed by MesoSystems since March 2000.
2. I have personal knowledge of the matters stated herein.
3. I submit this affidavit in support of Defendant's Motion to Dismiss Plaintiffs' Complaint and for Attorneys' Fees and Costs as a Sanction for Plaintiffs' Abuse of the Discovery Process.
4. Upon commencement of their employment with MesoSystems, Plaintiffs were each issued laptops for use in engaging in MesoSystems-related business. During their employment, Plaintiffs also removed from MesoSystems' premises an HP CD-writer owned by MesoSystems. The CD-writer allows files to be copied from a computer hard drive to a CD.

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5. On January 30, 2002, Plaintiffs' counsel, via courier, returned two Sony laptop computers to MesoSystems. These were the same laptops that were used by plaintiffs James Seaba and Cory Phillips during their employment with MesoSystems. At that time, Plaintiffs also returned, among other items, the HP CD-writer that they had previously taken.

6. Prior to return of the laptops, MesoSystems set up and implemented a strict chain of custody procedure.

7. Upon the return of the laptops on January 30, 2002, on behalf of MesoSystems and at the direction of Ned Godshall, the Chief Executive Officer for MesoFuel, Inc., a majority-owned subsidiary of MesoSystems, I acknowledged receipt of the two laptops, the CD-writer, and the other items returned at that time. A true and correct copy of the Acknowledgment of Receipt bearing my initials is attached hereto as Exhibit A.

8. McsoSystems immediately initiated a chain of custody form. The first action on the form was filled out on January 30, 2002, when the laptops were returned. The laptops were then stored in a locked cabinet on company premises so that no one other than myself had access to them.

9. On February 11, 2002, upon Dr. Godshall's instructions and pursuant to arrangements made by counsel, MesoSystems sent, via UPS, the laptops, along with the chain of custody form, to New Technologies Armor, Inc. ("NTI") for storage.

10. From the time that Plaintiffs returned the computers to MesoSystems until the computers were sent to NTI, no one at MesoSystems or MesoFuel in any way accessed the boxes where the laptops were contained or attempted to operate the laptops during the time they were locked at our premises. My only contact with the laptops was to physically receive them, place them in the locked cabinet and ship them to NTI.

  
Lisa Albrecht

SUBSCRIBED and SWORN to before me this 21 day of April, 2003.

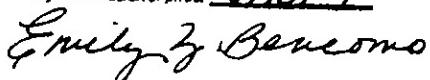


OFFICIAL SEAL

EMILY Y. BENCOMO

NOTARY PUBLIC STATE OF NEW MEXICO

My commission expires: 6/13/04

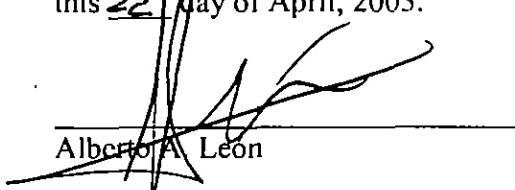




Print Name:

Notary Public in and for the State of New Mexico, residing at 3909 Rio Grande NW 87107  
My commission expires: 6/13/04

I HEREBY CERTIFY that a true And correct copy of the foregoing was ~~hand delivered~~ to counsel of record this 22 day of April, 2003.

  
Alberto A. Leon